

UNITED STATES DISTRICT COURT  
DISTRICT OF NEW JERSEY

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JOHN J. LAWLESS,

1:19-cv-16332 (NLH)

Petitioner,

**MEMORANDUM OPINION & ORDER**

v.

JOHN POWELL,

Respondent.

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**APPEARANCES:**

John J. Lawless  
670597/688460-B  
South Woods State Prison  
215 South Burlington Road  
Bridgeton, NJ 08302

Petitioner Pro se

Jeffrey H. Sutherland, Cape May County Prosecutor  
Gretchen Anderson Pickering, Senior Assistant Prosecutor  
Cape May County Prosecutor's Office  
4 Moore Road - DN - 110  
Cape May Court House, NJ 08210

Counsel for Respondent

**HILLMAN, District Judge**

WHEREAS, the Court dismissed Petitioner John Lawless' petition for writ of habeas corpus under 28 U.S.C. § 2254 on January 13, 2021, see ECF No. 18; and

WHEREAS, the Clerk docketed Petitioner's notice of appeal and motion for leave to file as within time on January 28, 2021,

ECF Nos. 19 & 20; and

WHEREAS, Petitioner asks this Court to accept his notice of appeal as timely filed, ECF No. 19. The Court construes this as a motion to extend the time to appeal; and

WHEREAS, a district court has the authority to extend the time to file a notice of appeal if "a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires" and "regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause." Fed. R. App. P. 4(a)(5)(A); and

WHEREAS, Federal Rule of Appellate Procedure 4 requires parties appealing a final order in a civil case to file a notice of appeal in the district court within 30 days of the judgment being entered. Fed. R. App. P. 4(a)(1)(A); and

WHEREAS, the Court's order was entered January 13, 2021, ECF No. 18. Therefore, Petitioner had to file his notice of appeal by February 16, 2021<sup>1</sup>; and

WHEREAS, Petitioner submitted his notice of appeal for mailing on January 18, 2021, ECF No. 20; and

WHEREAS, Petitioner's motion is unnecessary as his notice

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<sup>1</sup> The Court was in recess on Friday, February 12, 2021, and Monday, February 15, 2021 was Washington's Birthday. Fed. R. Civ. P. 6(a)(1)(C); Fed. R. App. P. 26(a)(1)(C).

of appeal was filed before the time under Federal Rule of Appellate Procedure 4 expired. See Weber v. Quinlan, No. 18-637-LPS, 2018 WL 3377153, at \*1 (D. Del. July 11, 2018) (dismissing motion for extension as unnecessary as time under Rule 4 had not expired), aff'd, 792 F. App'x 214 (3d Cir. 2019); and

WHEREAS, Petitioner's appeal is proceeding before the Third Circuit, see ECF No. 21,

THEREFORE, IT IS on this 5th day of March, 2021

ORDERED that Petitioner's motion for leave to file as within time, ECF No. 19, is dismissed as moot; and it is finally

ORDERED that the Clerk shall send a copy of this order to Petitioner by regular mail.

At Camden, New Jersey

s/ Noel L. Hillman  
NOEL L. HILLMAN, U.S.D.J.